

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CHARLES L. DECESARE,

Plaintiff,

-against-

THE AETNA LIFE INSURANCE CO. and
THE DRESS BARN LONG TERM
DISABILITY PLAN,

Defendants.
-----X

Civil Action No.
12 Civ. 7162 (KMK)

**DECLARATION OF
BARBARA A. MATARAZZO**

Pursuant to 28 U.S.C. Section 1746, Barbara A. Matarazzo states as follows:

1. I am a partner with the Law Firm of the Offices of Barbara A. Matarazzo, counsel for the above named plaintiff, Charles DeCesare in this matter.
2. I submit this Declaration in support of plaintiff's motion to compel discovery. A pre-motion conference was held before Honor Kenneth M. Karas, a United States District Judge.
3. Annexed hereto as **Exhibit A** is a copy of the Amended Complaint filed in this case.
4. Annexed hereto as **Exhibit B** is a copy of defendant's Amended Answer filed in this case.
5. Annexed hereto as **Exhibit C** is a copy of Plaintiff's Rule 34 Request for Production of Documents dated March 28, 2013.
6. Annexed hereto as **Exhibit D** is a copy of Defendant's Response to Plaintiff's Rule 34 Request for Production of Documents dated May 10, 2013, 2013.
7. Annexed hereto as **Exhibit E** is a copy of Plaintiff's Rule 33 First Set of Interrogatories dated May 20, 2013.

8. Annexed hereto as **Exhibit F** is a copy of Defendant's Response to Plaintiff's Rule 33 First Set of Interrogatories in May 6, 2013.
9. Annexed hereto as **Exhibit G** is Plaintiff's Group Long Term Disability Coverage Plan.
10. Annexed hereto as **Exhibit H** is a copy of the Dress Barn Life Insurance Agreement provided to the plaintiff, Mr. DeCesare.
11. Annexed hereto as **Exhibit I** is a copy of an Aetna letter of May 5, 2009 certifying Mr. DeCesare's disability from 3/30/2009 through 6/7/2009.
12. Annexed hereto as **Exhibit J** is a copy of an Aetna letter of 6/9/2009 certifying Mr. DeCesare's Short Term Disability from 3/30/2009 through 7/6/2009, which attaches an "overview of position" itemizing the duties and physical requirements of Mr. DeCesare's job with the Dress Barn.
13. Annexed hereto as **Exhibit K** is an Aetna letter of June 11, 2009 confirming Mr. DeCesare's eligibility to receive monthly disability benefits from 6/28/2009 and continuing for 24 months, until 6/28/2011.
14. Annexed hereto as **Exhibit L** is a letter from Mr. DeCesare's treating physician, Dr. Stephen Hoverman, dated June 17, 2009.
15. Annexed hereto as **Exhibit M** is an Aetna letter of December 22, 2009 requesting that Mr. DeCesare apply for social security disability benefits to offset the payments Aetna has made to Mr. DeCesare in disability benefits.
16. Annexed hereto as **Exhibit N** is an Aetna letter of August 9, 2010 to DeCesare acknowledging that he has been awarded social security income benefits, and advising that his plan requires Aetna offset his monthly benefits by the amount of the social

security disability income benefits. In addition, Aetna notified Mr. DeCesare that he has been overpaid almost \$23,000, which Aetna sought to recover.

17. Annexed hereto as **Exhibit O** is an Aetna letter of December 29, 2010 to Mr. DeCesare giving a non-insurance policy based definition of total disability for the period after 25 months, disabled from performing any gainful occupation”, stating Aetna will consider factors not listed in the insurance policy.
18. Annexed hereto as **Exhibit P** is a follow-up visit report from Plaintiff’s doctor, Dr. Dobrow, from March 14, 2011.
19. Annexed hereto as **Exhibit Q** is a medical status report from Plaintiff’s doctor, Dr. Wong dated July 14, 2011, advising of Mr. DeCesare’s total disability.
20. Annexed hereto as **Exhibit R** is a Medical Status Report dated July 25, 2011 from Plaintiff’s doctor, Dr. Dobrow. Included in letter is a statement that Mr. DeCesare is not able to return to any form of work due to his medical condition.
21. Annexed hereto as **Exhibit S** is the Aetna letter of November 29, 2011 to Dr. Dobrow from Terri Kili, Aetna Senior Technical Specialist, advising him that Aetna’s doctor, Dr. Garvey, reviewed the surveillance video and changed his opinion of the disability of Mr. DeCesare as a result. This letter also asks Dr. Dobrow to reevaluate Mr. DeCesare’s disability based upon Dr. Garvey’s re-assessment and the surveillance video as well as the report on the surveillance video from Search Consultants Group Inc.
22. Annexed hereto as **Exhibit T** is Terri Kili’s identical letter dated November 29, 2011 to Dr. Wong.
23. Annexed hereto as **Exhibit U** is the October 20, 2011 Report of Research Consultants Group Inc., the entity that conducted the surveillance video, with their editorialized

summary. This document was obtained by the undersigned from Dr. Wong on January 17, 2012. Dr. Wong had been provided this Report by Aetna and forwarded same to the undersigned.

24. Annexed hereto as **Exhibit V** is the Barbara A. Matarazzo letter of December 16, 2011 to Terri Kili requesting copy of the surveillance video, the Surveillance Report, the defendant's attending physicians statements of Dr. Garvey, Dr. Swotinsky, the IME report of Dr. Garvey, as well as a copy of all the materials sent to Drs. Wong and Dobrow.
25. Annexed hereto as **Exhibit W** is the response of Terri Kili, a letter dated December 16, 2011 refusing to provide any of the requested material to the undersigned, claiming that the "claim is still open, we are unable to provide you with a copy of the IME and video surveillance reports/cd at this time", and claiming that Aetna will only release it to Mr. DeCesare's treating physicians, and the claimant after an adverse decision on the claim.
26. Annexed hereto as **Exhibit X** is the Aetna Denial of Benefits Letter of January 9, 2012.
27. Annexed hereto as **Exhibit Y** is a letter from Barbara A. Matarazzo to Teri Kili dated January 17, 2012, requesting again the claimed documentation that Ms. Kili had refused to produce several months earlier.
28. Annexed hereto as **Exhibit Z** is the response letter of Terri Kili dated February 3, 2012 to the undersigned, however, still refusing to produce the files of Dr. Swotinsky and Dr. Garvey essentially claiming they were outside the Administrative Record.
29. Annexed hereto as **Exhibit AA** is a copy of an Aetna Termination Notice dated February 8, 2012 to Mr. DeCesare, advising him that Aetna would no longer be waiving his life

insurance premium based on Aetna's conclusion that Mr. DeCesare was no longer considered permanently and totally disabled effective February 8, 2012.

30. Annexed hereto as **Exhibit AB** a copy of Mr. DeCesare's Appeal Letter written by the undersigned dated May 3, 2012.

31. Annexed hereto as **Exhibit AC** is a copy of the Aetna letter of August 24, 2012 denying Mr. DeCesare's Appeal.

I declare under penalty of perjury that the foregoing is true and accurate.

Dated: White Plains, New York
July 10, 2013

Yours, etc.,

LAW OFFICE OF BARBARA A. MATARAZZO, ESQ.
1025 Westchester Avenue
White Plains, New York 10604
Attorneys for Plaintiff, Charles L. DeCesare

By: 

Barbara A. Matarazzo, Esq. (BAM-8380)

TO: Michael H. Bernstein, Esq.
Matthew Paul Mazzola, Esq.
Sedgwick LLP (NY)
225 Liberty Street - 28th Floor
New York, NY 10281
(212) 422-0202
Fax: (212) 422-0925
michael.bernstein@sdma.com
matthew.mazzola@sdma.com
Attorneys for Defendant

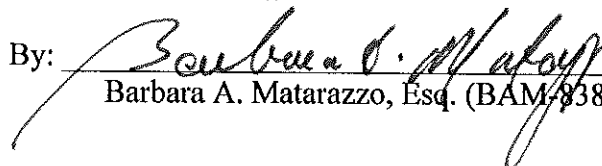
CERTIFICATE OF SERVICE

I, Barbara A. Matarazzo, hereby certify that on July 10, 2013, a copy of the Declaration of Barbara A. Matarazzo was mailed via first class mail, to the counsel listed below:

Michael H. Bernstein, Esq.
Matthew Paul Mazzola, Esq.
Sedgwick LLP (NY)
225 Liberty Street - 28th Floor
New York, NY 10281
(212) 422-0202
Fax: (212) 422-0925
michael.bernstein@sdma.com
matthew.mazzola@sdma.com
Attorneys for Defendant

LAW OFFICE OF BARBARA A. MATARAZZO, ESQ.
1025 Westchester Avenue
White Plains, New York 10604
Attorneys for Plaintiff, Charles L. DeCesare

By: _____


Barbara A. Matarazzo, Esq. (BAM-8380)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docket No.: 12cv7162

CHARLES L. DECESARE,

Plaintiff,

-against -

THE AETNA LIFE INSURANCE COMPANY, AND
THE DRESS BARN LONG TERM DISABILITY PLAN,

Defendant.

DECLARATION OF BARBARA A. MATARAZZO

LAW OFFICE OF BARBARA A. MATARAZZO

Attorneys for Plaintiff, Charles L. DeCesare

Office & P.O. Address:

1025 Westchester Avenue, Suite 402

White Plains, New York 10604

Tel.: (914) 346-8088

Fax: (914) 681-0013

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involved potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated: _____

Signature _____